

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION CIRCUIT/SUPERIOR COURT

CAUSE NO: 49D100403PL000672

STATE OF INDIANA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JOE'S AUTO SALES, INC., )  
 )  
Defendant. )

**FILED**

MAR 31-2004

*Dana Anne Schaller*  
CLERK OF THE  
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. The Defendant, Joe's Auto Sales, Inc., is a domestic corporation engaged in the retail sale of used motor vehicles, with a principal place of business in Marion County located at 3421 W. Washington Street, Indianapolis, Indiana.

### FACTS

3. At least since August 11, 1993, the Defendant has engaged in the retail sale of used motor vehicles and sold motor vehicles to consumers.

4. The State of Indiana entered into an Assurance of Voluntary Compliance with the Defendant, Joe's Auto Sales, Inc., on March 2, 2001. A true and accurate copy of the Assurance of Voluntary Compliance is attached and incorporated by reference as Exhibit "A".

5. Pursuant to the Assurance of Voluntary Compliance, the Defendant agreed to refrain from making, causing to be made, or permitting to be made, expressly or by implication, any implication, any representation, orally or in writing, regarding its ability to deliver certificates of title for motor vehicles to vehicle purchasers unless the Defendant actually intended to provide and, in fact, does provide consumers with motor vehicle certificates of title as represented.

6. The Defendant further agreed in the Assurance of Voluntary Compliance to comply with all provisions of Ind. Code § 9-17-3-3, including but not limited to:

- a. Endorsing the certificate of title for a vehicle which is sold or has ownership transferred by [the Defendant];
- b. Delivering the endorsed certificate of title to the purchaser or transferee at the time of sale or delivery; [and]
- c. If the conditions under Ind. Code § 9-17-3-3(a)(4)(A-D) are met, delivering the endorsed certificate of title to the purchaser or transferee within twenty-one (21) days after the date of sale.

7. On or about August 9, 2003, the Defendant represented that he would sell Pamela Stigger of Indianapolis, Indiana, a 1995 Chrysler Sebring LX, VIN 4C3AU42Y2SE243191, for Six Thousand Four Hundred and Four Dollars and Seventy Cents (\$6,404.70).

8. Stigger made all initial payments on the vehicle and ultimately paid a total of One Thousand Six Hundred and Ten Dollars (\$1,610.00) toward the balance owed on the vehicle.

9. The Defendant did not possess title for the Chrysler Sebring LX on the date of sale.

10. The Defendant failed to deliver the vehicle title to Stigger at the time of sale or delivery of the Chrysler Sebring LX.

11. The Defendant failed to deliver the vehicle title to Stigger within twenty-one (21) days after the dates of purchase.

12. The Defendant represented at the time of sale that it would deliver title to the vehicle by August 30, 2003.

**COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

13. The transaction identified in paragraph 7 is a "consumer transaction" as defined by Ind. Code § 24-5-0.5-2(1).

14. The Defendant, Joe's Auto Sales, Inc., is a "supplier" as defined in Ind. Code § 24-5-0.5-2(3).

15. The Defendant's representations to Stigger regarding the characteristics or benefits of the vehicle transaction, when the Defendant knew or reasonably should have known that the vehicle did not possess such, as referenced in paragraph 7, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

16. The Defendant's representations to Stigger that he would be able to deliver title or otherwise complete the subject of the consumer transaction within a reasonable period of time when the Defendant knew or reasonably should have known it could not, as referenced in paragraph 12, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT**

17. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 16 above.

18. The misrepresentations and deceptive acts set forth in paragraphs 7 and 12 were committed by the Defendant with knowledge and intent to deceive.

**RELIEF**

**WHEREFORE**, Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendant, Joe's Auto Sales, Inc., enjoining the Defendant, its agents, representatives, employees, successors, and assigns from the following:

- a. Selling motor vehicles without delivering titles as required by Ind. Code § 9-17-3-3;
- b. Representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendant knew or reasonably should have known it does not have; and

- c. Representing expressly or by implication that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or should reasonably know it could not.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

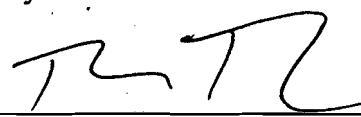
- a. Cancellation of the Defendant's contract with Pamela Stigger pursuant to Ind. Code § 24-5-0.5-4(d);
- b. Consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all deposits, down payments and other funds remitted by Stigger for the purchase of the Chrysler Sebring in the amount of One Thousand Six Hundred and Ten Dollars (\$1,610.00);
- c. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. On Count II of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;
- e. On Count II of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. All other proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:

  
Terry Tolliver  
Deputy Attorney General  
Atty. No. 22556-49

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STATE OF INDIANA        )  
                              ) SS: IN THE MARION COUNTY CIRCUIT COURT  
COUNTY OF MARION     ) AVC NO. 01-021

IN RE: JOE'S AUTO SALES, INC.,        )

Respondent.                                )

FILED

MAY 02 2001

**ASSURANCE OF VOLUNTARY COMPLIANCE**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, and the Respondent, Joe's Auto Sales, Inc., enter into an Assurance of Voluntary Compliance (Assurance) pursuant to Indiana Code §24-5-0.5-7.

Any violation of the terms of this Assurance constitutes prima facie evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. Respondent is an Indiana corporation engaged in the sale of used automobiles, with a principal place of business at 3421 West Washington Street, Indianapolis, Indiana 46222, and transacts business with Indiana consumers.
2. The terms of this Assurance apply to and are binding upon Respondent, its employees, agents, representatives, successors, and assigns.
3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code §4-6-9-4 and Ind. Code §24-5-0.5-1 *et seq.*

STATE'S  
EXHIBIT

A

4. Respondent shall not make, cause to be made, or permit to be made, expressly or by implication, any representation, orally or in writing, regarding its ability to deliver certificates of title for motor vehicles to vehicle purchasers unless Respondent actually intends to provide and, in fact, provides consumers with motor vehicle certificates of title as represented.

5. Respondent agrees to immediately comply with all provisions of Ind. Code §9-17-3-3, including but not limited to:

- a. endorsing the certificate of title for a vehicle which is sold or has ownership transferred by Respondent;
- b. delivering the endorsed certificate of title to the purchaser or transferee at the time of sale or delivery;
- c. if the conditions under Ind. Code §9-17-3-3(a)(4) (A-D) are met, delivering the endorsed certificate of title to the purchaser or transferee within twenty-one (21) days after the date of sale.

6. Respondent will immediately comply with all provisions of Ind. Code §9-18-26-10 and 140 IAC 3.5-2-15, including but not limited to, issuing no more than one interim license plate to a motor vehicle purchaser.

7. Upon execution of this Assurance, Respondent shall pay costs in the amount of \$500.00 to the Office of the Attorney General.

8. Respondent shall not represent that the Office of the Attorney General approves or endorses Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

9. Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.



10. The Office of the Attorney General shall file this Assurance with the Circuit Court of Marion County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 24 day of February, 2001.

STATE OF INDIANA

Steve Carter  
Indiana Attorney General

By: Terry Tolliver  
Terry Tolliver  
Deputy Attorney General  
Atty. No. 22556-49  
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Indianapolis, Indiana 46204  
Telephone: (317) 233-3300

RESPONDENT

JOE'S AUTO SALES, INC.

By: [Signature]  
Printed Name: Gary Clark  
Title: Manager

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2001. **MAR 02 2001**

William T. Lawrence  
Judge, Marion Circuit Court